

Initially, the respondent argues the claimant's appeal does not raise a jurisdictional issue for an appeal from a preliminary hearing. At the November 28, 2006 preliminary hearing, the respondent admitted for preliminary hearing purposes that the claimant's work-related injury was compensable. The only issue before the ALJ was whether or not the

claimant was entitled to temporary total disability compensation benefits as well as \$500 in unauthorized medical compensation for services rendered by a physician.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.¹ This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.²

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing. Moreover, K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation.

Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.³

Whether the ALJ should, in a given set of circumstances, authorize temporary total disability compensation or medical compensation is not a question that goes to the jurisdiction of the ALJ. K.S.A. 44-534a specifically grants an ALJ the authority to decide at a preliminary hearing issues concerning the payment of temporary total disability compensation and medical compensation. Therefore, the ALJ did not exceed his jurisdiction. Accordingly, the Board does not have jurisdiction to address this issue at this juncture of the proceedings.

¹ K.S.A. 44-551(Furse 2000).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683, P.2d 902 (1984).

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.⁴ Accordingly, claimant's appeal is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁵ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁶

WHEREFORE, it is the finding of this Board Member that the claimant's application for review is hereby dismissed and the Order of Administrative Law Judge Steven J. Howard dated November 29, 2006, remains in full force and effect.

IT IS SO ORDERED.

Dated this 31st day of January, 2007.

BOARD MEMBER

c: Chris Cowger, Attorney for Claimant
Douglas D. Hobbs, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge

⁴ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

⁵ K.S.A. 44-534a.

⁶ K.S.A. 2005 Supp. 44-555c(k).